

**Rule 29. Appeals to Supreme Court****Rule 29.01 Scope of Rule**

**Subd. 1. Appeals from Court of Appeals and in First-Degree Murder Cases.** Rule 29 governs the procedure in misdemeanor, gross misdemeanor, and felony cases for appeals from the Court of Appeals to the Supreme Court and from the district court to the Supreme Court if the defendant has been convicted of first-degree murder.

**Subd. 2. Applicability of Rules of Civil Appellate Procedure.** To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern appellate procedure unless these rules direct otherwise.

**Subd. 3. Suspension of Rules.** For good cause, the Supreme Court may suspend application of any of these rules on a party's motion or on its own initiative, and may order proceedings as it directs, but cannot alter the time for filing a notice of appeal or a petition for review, unless permitted by Rule 29.03, subd. 3(f) or 29.04, subd. 2.

**Rule 29.02 Right of Appeal****Subd. 1. Appeals in First-Degree Murder Cases.**

(a) A defendant may appeal as of right from the district court to the Supreme Court from a final judgment of conviction of first-degree murder.

(b) Either the defendant or the prosecutor may appeal as of right from the district court to the Supreme Court, in a first-degree murder case, from an adverse final order deciding a petition for post-conviction relief under Minnesota Statutes, chapter 590.

(c) The prosecutor may appeal as of right from the district court to the Supreme Court, in a first-degree murder case, from:

(i) a judgment of acquittal after a jury verdict of guilty of first-degree murder;

(ii) an order vacating judgment and dismissing the case after a jury verdict of guilty of first-degree murder; or

(iii) an order granting a new trial under Rule 26.04, subd. 1, after a verdict or judgment of guilty of first-degree murder, if the district court expressly states in the order, or in an accompanying memorandum, that the order is based exclusively on a question of law that the district court concludes is so important or doubtful that it requires a decision by the appellate courts. An order for a new trial is not appealable if based on the interests of justice.

(d) Other charges that were joined for prosecution with the first-degree murder charge may be included in the appeal. No other direct appeals can be taken from the district court to the Supreme Court except as provided in Minn. R. Civ. App. P. 118 (accelerated review by the Supreme Court of cases pending in the Court of Appeals).

**Subd. 2. Appeals from Court of Appeals.** A party may appeal from a final decision of the Court of Appeals to the Supreme Court only with leave of the Supreme Court.

**Rule 29.03 Procedure for Appeals by Defendant in First-Degree Murder Cases**

**Subd. 1. Service and Filing.** A defendant appeals by filing a notice of appeal to the Supreme Court with the clerk of the appellate courts, with proof of service on the prosecutor, the Minnesota Attorney General, and the court administrator for the county in which the judgment appealed from is entered. The defendant does not have to post a bond to appeal. The defendant need not file the

statement of the case in Minn. R. Civ. App. P. 133.03. The defendant's failure to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Supreme Court deems appropriate, including dismissal of the appeal.

**Subd. 2. Contents of Notice of Appeal.** The notice of appeal must specify:

- (a) the party or parties filing the appeal;
- (b) the names, addresses, and telephone numbers of all counsel and whom they represent;
- (c) the judgment or order from which appeal is taken; and
- (d) that the appeal is to the Supreme Court.

**Subd. 3. Time for Taking an Appeal.**

(a) An appeal by a defendant from a final judgment of conviction of first-degree murder must be filed within 90 days after the final judgment. A judgment is final within the meaning of these rules when there is a judgment of conviction upon the verdict of a jury, or the finding of the court, and sentence is imposed.

(b) A notice of appeal filed after the announcement of a decision or order - but before sentencing or entry of judgment or order - must be treated as occurring after these events, but on the same day.

(c) A timely motion to vacate the judgment, for a judgment of acquittal, or for a new trial tolls the time for an appeal from a final judgment until the entry of an order denying the motion, and the order denying the motion may be reviewed in an appeal from the final judgment.

(d) An appeal by a defendant from an adverse final order in a post-conviction proceeding in a first-degree murder case must be filed within 60 days after its entry.

(e) A judgment or order is entered under these appellate rules when the court administrator enters it in the record.

(f) For good cause, the district court or a justice of the Supreme Court may, before or after the time for appeal has expired, with or without motion or notice, extend the time for filing a notice of appeal up to 30 days from the expiration of the time prescribed by these rules.

**Subd. 4. Other Procedures.** The following rules govern the below-listed aspects of an appeal in a first-degree murder case:

- (a) Rule 28.02, subd. 4(4): stay of appeal for post-conviction proceedings;
- (b) Rule 28.02, subd. 5: proceeding in forma pauperis;
- (c) Rule 28.02, subd. 6: stay;
- (d) Rule 28.02, subd. 7: release of defendant;
- (e) Rule 28.02, subd. 9: transcript of proceedings and transmission of the transcript and record;
- (f) Rule 28.02, subd. 10: briefs;
- (g) Rule 28.02, subd. 11: scope of review;
- (h) Rule 28.02, subd. 12: action on appeal;

(i) Rule 28.06: voluntary dismissal; and

(j) Rule 29.04, subd. 9: oral argument.

(Amended effective September 1, 2011; amended effective March 1, 2015.)

### **Rule 29.04 Procedure for Appeals from Court of Appeals**

**Subd. 1. Service and Filing.** A party petitioning for review to the Supreme Court from the Court of Appeals must file a petition for review with the clerk of the appellate courts, with proof of service on opposing counsel and the Minnesota Attorney General. A defendant does not have to file a bond to petition for review.

A party's failure to take any step other than timely filing the petition for review does not affect the validity of the appeal, but permits action the Supreme Court deems appropriate, including dismissal of the appeal.

**Subd. 2. Time for Petitioning.** A party petitioning for review to the Supreme Court from the Court of Appeals must serve and file the petition for review within 30 days after the Court of Appeals files its decision.

For good cause, a judge of the Court of Appeals or a justice of the Supreme Court may, before or after the time to serve and file a petition for review has expired, with or without motion or notice, extend the time to do so up to 30 days from the expiration of the time prescribed by these rules.

**Subd. 3. Contents of Petition for Review.** The petition for review must not exceed 4,000 words, exclusive of the caption, signature block, and addendum, and must identify the petitioner, state that petitioner is seeking permission to appeal to the Supreme Court from the Court of Appeals, and contain in order the following information:

- (1) the names, addresses, and telephone numbers of the attorneys for all parties;
- (2) the date the Court of Appeals filed its decision, and a designation of the judgment or order from which petitioner had appealed to the Court of Appeals;
- (3) a concise statement of the legal issue or issues presented for review, indicating how the district court and the Court of Appeals decided each issue;
- (4) a procedural history of the case from commencement of prosecution through filing of the decision in the Court of Appeals, including a designation of the district court and district court judge, and the disposition of the case in the district court and in the Court of Appeals;
- (5) a concise statement of facts indicating briefly the nature of the case, and including only the facts relevant to the issue(s) sought to be reviewed;
- (6) a concise statement of the reasons why the Supreme Court should exercise its discretion to review the case; and
- (7) an addendum containing a copy of the written decision of the Court of Appeals, and a copy of any district court recitation of the essential facts of the case, conclusions of law, and memoranda.

**Subd. 4. Discretionary Review.** The Supreme Court may exercise discretionary review of any Court of Appeals' decision. The following criteria may be considered:

- (1) the decision presents an important question on which the Supreme Court should rule;

- (2) the Court of Appeals has ruled on the constitutionality of a statute;
- (3) the Court of Appeals has decided a question in direct conflict with an applicable precedent of a Minnesota appellate court;
- (4) the lower courts have so far departed from the accepted and usual course of justice that the Supreme Court should exercise its supervisory powers; or
- (5) a Supreme Court decision will help develop, clarify, or harmonize the law; and
  - (i) the case calls for the application of a new principle or policy;
  - (ii) the resolution of the question presented has possible statewide impact; or
  - (iii) the question will likely recur unless resolved by the Supreme Court.

**Subd. 5. Response to Petition.** When a petition for review has been filed, the respondent must file with the clerk of the appellate courts within 20 days after service of the petition on respondent any response, not to exceed 4,000 words, exclusive of the caption, signature block, and addendum, and proof of service on appellant. Failing to respond to the petition will not be considered agreement with it.

**Subd. 6. Cross-Petition.** A party cross-petitioning for review to the Supreme Court must file with the clerk of the appellate courts within 20 days after service of the petition for review, or within 30 days after filing of the decision of the Court of Appeals, whichever is later, a cross-petition for review, not to exceed ten pages exclusive of the addendum, and proof of service on the petitioner. The cross-petition must conform to Rule 29.04, subd. 3, but the procedural history, statement of facts, and addendum need not be included unless the cross-petitioner disagrees with them as they appear in the petition for review.

The court may permit a party, without filing a cross-petition, to defend a decision or judgment on any ground that the law and record permit that would not expand the relief that has been granted to the party.

**Subd. 7. Action on Petition or Cross-Petition.** The Supreme Court must file its order granting or denying review or cross-review within 60 days from the date the petition was filed. Upon the filing of the order, the clerk of the appellate courts must transmit a copy of it to the attorneys for the parties.

**Subd. 8. Briefs.**

- (1) Except as subdivision 10 (pretrial appeals) of this rule directs:
  - (a) appellant must serve and file the appellant's brief and addendum within 30 days after filing of the order granting review;
  - (b) respondent must serve and file the respondent's brief and addendum, if any, within 30 days after service of appellant's brief; and
  - (c) appellant may serve and file a reply brief within ten days after service of the respondent's brief.
- (2) In all other respects, the Minnesota Rules of Civil Appellate Procedure govern, to the extent applicable, the form and filing of briefs, but appellant's brief must also contain a procedural history.

**Subd. 9. Oral Argument.** Each party must serve and file with the party's initial brief a notice stating whether the party requests oral argument. Oral argument must be granted unless the court determines it is unnecessary because:

(1) neither party has requested oral argument in the notice served and filed with the initial briefs;

(2) a party forfeits oral argument under Minn. R. Civ. App. P. 134.01 for not timely filing its brief; or

(3) the parties waive oral argument by joint agreement under Minn. R. Civ. App. P. 134.06.

The Supreme Court may direct presentation of oral argument in any case.

**Subd. 10. Appeals Involving Pretrial Orders.**

(1) Briefs. In cases originally appealed to the Court of Appeals by the prosecutor under Rule 28.04, the appellant must, within 15 days from the date of filing of the order granting review, serve the appellant's brief on respondent and file with the clerk of the appellate courts the number of copies prescribed by standing order of the appellate court.

Within eight days of service, respondent must serve the respondent's brief on appellant and file with the clerk of the appellate courts the number of copies prescribed by standing order of the appellate court.

(2) Hearing. In pretrial appeals, the date of oral argument or submission of the case to the court without oral argument must not be later than three months after all briefs have been filed.

The Supreme Court must not hear or accept as submitted any pretrial appeal not argued or submitted within this three-month period. If the case has not been argued or submitted within three months, the district court must proceed under the judgment of the Court of Appeals as if no appeal had been taken to the Supreme Court.

(3) Attorney Fees. Reasonable attorney fees and costs incurred must be allowed to the defendant on an appeal to the Supreme Court by the prosecutor in a case originally appealed by the prosecutor to the Court of Appeals under Rule 28.04. The fees and costs must be paid by the governmental unit responsible for the prosecution.

(4) Conditions of Release. Upon an appeal to the Supreme Court in a case originally appealed by the prosecutor under Rule 28.04, Rule 6.02, subds. 1 and 2, govern the conditions for defendant's release pending the appeal.

**Subd. 11. Other Procedures.** The following rules govern the below-listed aspects of an appeal to the Supreme Court from the Court of Appeals:

(1) Rule 28.02, subd. 4(4): stay of appeal for post-conviction proceedings;

(2) Rule 28.02, subd. 5: proceeding in forma pauperis;

(3) Rule 28.02, subd. 6: stay;

(4) Rule 28.02, subd. 7: release of defendant;

(5) Rule 28.02, subd. 8: record on appeal;

(6) Rule 28.02, subd. 11: scope of review;

(7) Rules 28.02, subd. 12, and 28.05, subd. 2: action on appeal; and

(8) Rule 28.06: voluntary dismissal.

(Amended effective September 1, 2011; amended effective March 1, 2015; amended effective July 1, 2016.)

### **Rule 29.05 Procedure for Appeals by the Prosecutor in Post-Conviction Cases**

Rule 28.04, subd. 6, applies to an appeal to the Supreme Court by the prosecutor from an adverse final order of the district court in post-conviction proceedings in a first-degree murder case.

### **Rule 29.06 Procedure for Prosecutor Appeals from a Judgment of Acquittal, Vacation of Judgment after a Jury Verdict of Guilty, or Order Granting a New Trial**

In first-degree murder cases, Rule 28.04, subd. 8 governs appeals by the prosecutor to the Supreme Court from:

- (1) a judgment of acquittal after a jury verdict of guilty;
- (2) an order vacating judgment and dismissing the case after a jury verdict of guilty; or
- (3) an order granting a new trial.

#### ***Comment - Rule 29***

*After a first-degree murder conviction, only the Supreme Court has appellate jurisdiction. See Minnesota Statutes, sections 480A.06, subdivision 1, and 632.14. This includes appeals from orders denying post-conviction relief from convictions in first-degree murder cases. See Minnesota Statutes, section 590.06. However, appeals in first-degree murder cases before conviction are decided by the Court of Appeals under Rule 28, and may be reviewed by the Supreme Court via a petition for further review.*

*Under Minn. R. Civ. App. P. 136.02, the clerk of the appellate courts is to enter judgment under the decision of the Court of Appeals not less than 30 days after that decision is filed. The filing of a petition for review under Rule 29.04 stays entry of the judgment and transmission of the judgment back to the clerk of the district court according to Minn. R. Civ. App. P. 136.02 and 136.03. If the petition for review is denied, the judgment is to be entered and transmitted immediately.*

*Rule 29.04 was amended in 2016 to redefine the length limit for petitions and responses to 4,000 words rather than ten pages. This change, coupled with the requirement that a 13-point font be used, will have a practical effect of permitting petitions that are slightly longer, but will be more easily read, both in paper format and on computer screens.*